IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1485 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

JILUSINH PRUTHVISINH PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KAMAL MEHTA, ADDL.GOVERNMENT PLEADER

for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 26/03/98

ORAL JUDGEMENT

By this application, under Art. 226 of Constitution of India, the petitioner calls in question the legality and validity of the order dt. 10/11/1997 passed by the Police Commissioner for the City of Ahmedabad, invoking his power under Sec. 3 of the Gujarat Anti-Social Activities Act (for short the 'Act'), pursuant to which the petitioner was arrested and at present, is kept under detention.

2. Necessary facts may, in short, be stated. The Commissioner of Police had the information that the

petitioner was a dangerous person and by his several nefarious activities, he was not only disturbing the public order but terrorising the people also. He, therefore, studied the case. He found that about four complaints were lodged against the petitioner with Shahibaug Police Station. All those complaints were relating to the offences punishable under Secs. 379 461392 read with Sec. 114 of I.P.Code. It was found from the papers of those cases that the petitioner was a habitual offender. He was committing the theft of the scooters, wheels of motor cars and car-tape etc. After inquisition, the Police Commissioner was satisfied about the fact that the petitioner was a tartar and decimator and for carrying out his subversive activities, he was seeking several types of assistance from different persons and those who refused to bend his way, they were brutally treated and had to face dire consequences. No one was, therefore, willing to make the statement against him or lodge the complaint. Every one used to keep his lips tight, rather than challenging the activities of the petitioner. The petitioner and his compeers used to assault and beat the person brutally, taking to the public places, if at all, he resisted to his demands or proposals. The people had, therefore, to succumb as they were feeling insecured. The Police Commissioner then found that to curb anti-social activities, stern action was necessary. He also found that any action under the general law falling short, would yield no result. According to his firmed view, the only way out was to pass the order of detention and detain the petitioner. He, therefore, passed the impugned order. The petitioner was arrested and is kept under detention.

3. Assailing the order of detention, the learned advocate representing the petitioner submitted that there was no justification to pass the order in question. There is nothing on record which would justify to brand the petitioner as the dangerous person. Even if some complaints are filed, that would not show that the order of detention was the only way out and the petitioner was a yahoo or catestrophic. No doubt, under Sec. 9(2) of the Act, the authority is vested with the privilege, and the authority can exercise the privilege and withhold certain facts, but before the privilege is exercised, the authority has to apply his mind and decide whether fear expressed by the witnesses is genuine or imaginary and decide whether the case is fit to exercise privilege and withhold certain facts in public interest. In this case, the Police Commissioner, without application of mind accepted the report sent to him and without any just cause, preferred to withhold the particulars of the

witnesses. Bereft of the particulars, it was difficult for the petitioner to make effective representation. The order in question is, therefore, bad in law and is required to be set aside.

4. Against such submission, Mr. Kamal Mehta, learned APP representing the otherside submitted that the petitioner, with a view to see that the order of detention is quashed on the ground of exercise of privilege and on other grounds pleaded, made a lame attempt. The authority, after application of mind and with meticulous care and finicky details studied papers, and reached the conclusion which is just and proper. The privilege exercised for keeping certain particulars secret or covered was the wise step in the public interest. 'The safety of the witnesses in no case be undermined. The other grounds raised were baseless and the grounds raised to challenge the order show that the petitioner is acting like a drawning man, catching anything available. There is, therefore, no justification to allow this application and grant the relief as prayed for.

5. During the course of submission, when I put queries, both the learned advocates tapered off their submissions, confining to the only ground of exercise of privilege under Sec.9(2) of the Act, going to the root of the case. I will, therefore, deal with the said ground and would not dwell upon rest of the grounds.

6. It would be better if the law about the non-disclosure of certain facts is elucidated. Reading Article 22(5) of the Constitution of India, what becomes clear is that the grounds on which order of detention is passed are required to be communicated to the detenu. The detenu is, therefore, required to be informed not merely factual inference and factual material which led to inference namely not to disclose certain facts but also the sources from which the factual material is gathered. The disclosure of sources can enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sources would be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act, the detaining authority is of course empowered to withhold such facts and particulars, the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has to be exercised sparingly and in those

cases, where public interest dictating non-discosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at any time by the detenu by those making statement against the detenu is imaginary or fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons, the authority making the order has to make necessary inquiry applying his mind. What can be deduced from such constitutional as well as legal scheme whereunder obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing the order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest. If the task of recording statements and necessary inquiry is entrusted to others, and if he mechanically endorses or accepts the recommendation of others or subordinate authority in that behalf without applying mind and taking his own decision, the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the court that he had sincerely and honestly applied the mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure so that the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power, the detenu may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference to a decision in the case of Bai Amina, W/o. Ibrahim Abdul Rahim Alla Vs. State of Gujarat and others- 22 G.L.R. 1186 held to be the good law by the Full Bench of this Court in the case of Chandrakant N. Patel Vs. State of Gujrat & Others 35(1) [1994(1)] G.L.R. 761, may be made.

7. In view of such law, the authority passing the detention order has to satisfy the court that it was absolutely necessary in the public interest to suppress

the particulars about witnesses keeping their safety in mind. No affidavit has been filed by the Police Commissioner who passed the order of detention. When no affidavit is filed, I am entitled to infer against the authority passing the order, and it can be assumed that without just and proper cause, privilege has been exercised, and without application of mind, the decision was taken by the authority. Reading the order, it appears that task of inquiry was entrusted to other Police Officer to find out whether fear expressed by the witnesses was genuine or imaginary or empty excuses. The Police Commissioner, without studying personally the report submitted by the Police Officer, has accepted the same. When he has mechanically accepted the report, his satisfaction is vitiated, and therefore, the privilege exercised, being unjust and improper, the order of detention must be held to be unconstitutional and illegal.

7. For the aforesaid reason, this application is allowed. The impugned order of detention dt. 10/10/1997, being unconstitutional and illegal, is hereby quashed and set aside. The petitioner is ordered to be set at liberty forthwith, if no longer required in any other case. Rule accordingly made absolute.

(ccs)